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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BETTY BRYER,

Plaintiff and Appellant,

v.

ELLEN GREEN-VENABLE et al.,

Defendants and Respondents.

D038647

(Super. Ct. No. GIC762333)

APPEAL from a judgment of the Superior Court of San Diego County, J. Richard Haden, Judge. Reversed with directions

The parties have stipulated the judgment be reversed and the matter remanded to the superior court to vacate the judgment and dismiss the action with prejudice, to have the remittitur issue immediately, and each party to bear its own costs on appeal.

In *Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 284, the Supreme Court held "when the parties to an action agree to settle their dispute and as part

of their settlement stipulate to a reversal of the trial court judgment, the Court of Appeal should grant their request for the stipulated reversal absent a showing of extraordinary circumstances that warrant an exception to this general rule. Any determination that such circumstances exist must be made on a case-by-case basis."

Effective January 1, 2000, the Legislature modified the appellate courts' power to accept a stipulated reversal. Code of Civil Procedure section 128, subdivision (a)(8) provides that before the court may accept and confirm the stipulated reversal or vacation of a judgment it must find: "(A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement."

Here, the parties have agreed to a global settlement of all disputes and claims. In an earlier suit, Bryer sued Venable for illegal foreclosure of a property owned by Marshall Bryer. Venable cross-complained alleging fraud. Having prevailed in the earlier suit, Bryer brought suit for malicious prosecution based on the filing of the cross-complaint. The complaint was stricken under Code of Civil Procedure section 425.16. Bryer appealed and this global settlement followed.

With regard to the statutory requirements noted above, there is no reasonable possibility the interests of nonparties or the public will be affected since the question here concerns collection on a debt between private parties.

With regard to the incentive for settlement, this case involves a loan made in 1996 and litigation that has continued since January 1999, including at least two trial court decisions and one previous appeal. Continuing and extended litigation erodes the public trust and increases the incentive of pretrial settlement. Private settlement in such circumstances fully complies with the statutory requirement.

The judgment is reversed. The superior court is directed to vacate and set aside the judgment and dismiss the action with prejudice. The remittitur is to issue immediately. The parties shall bear their own costs on appeal.

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KREMER, P. J.

WE CONCUR:

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HALLER, J.

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McINTYRE, J.